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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.15830 of 2010

M.Sundaravadivelu

...Petitioner

Vs.

1.The Director,
Tamilnadu State Health
Transport Department,
Chennai-600032.

2.The Workshop Superintendent,
Regional Workshop (Health),
Tamilnadu State Health
Transport Department,
Coimbatore - 641 018.

...Respondents

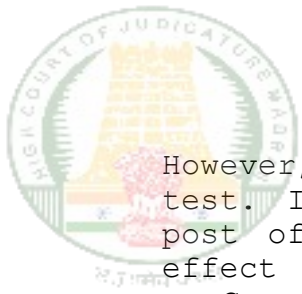
PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the First Respondent in Na.Ka.No.6963/A2./2010 dated 23.06.2010 confirming the order passed by the second respondent in Se.Mu.Aanai.No.1748/A2/Ma.Pa.Ma(Su)/Kovai/09 dated 15.12.2009 and quash the same and direct the respondents to refund the sum of Rs.16,604/- recovered from petitioner and restore the petitioner's pay as it stood prior to the issue of the impugned order and grant him all consequential benefits.

For Petitioner : Mr.P.Rajendran

For Respondents : Mrs.R.L.Krithika

ORDER

This Writ Petition is filed praying for Writ of Certiorarified Mandamus challenging the impugned proceedings dated 15.12.2009 seeking to recover, the annual increments granted to the petitioner, on the premise that the petitioner, while being appointed to the post of Staff Superintendent would be eligible for increment if he passed the account test.



However, admittedly, the petitioner has not passed the account test. Importantly, the petitioner has been regularized in the post of Store Superintendent vide order dated 01.06.2004 with effect from 30.06.2003. Thereafter, the petitioner was promoted as General Foreman and continued to remain in the said post till his retirement i.e 31.03.2008. While so, impugned proceedings dated 15.12.2009 was passed seeking to recover the increments paid to the petitioner in the post of Store Superintendent on the premise that the petitioner was not entitled to the increment as he had not passed the account test.

2. A representation dated 28.05.2010 was submitted subsequent to the impugned recovery proceedings wherein it has been admitted that the petitioner has not passed the account test, but during his service until retirement, he was not issued any communication asking him to pass the Account test for Subordinate Officers Part-I. The recovery proceedings has been confirmed by the first respondent/The Director, Tamil Nadu State Health Transport Corporation vide proceedings in Na.Ka. No. 6963/A2/ 2010 dated 23.06.2010 which is also challenged in this Writ Petition.

3. It is submitted by the respondent that the petitioner having given an undertaking that any amount which may be found due can be recovered from his pension, it would not be open to the petitioner to resile there from or contend to the contrary.

4.To the contrary, it was submitted by the petitioner that any recovery proceedings after 5 years from the date of payment more so after retirement is contrary to the decision of the Supreme Court in White washers case and the same is unsustainable. Further, the impugned order dated 15.12.2009 has been passed without putting the petitioners on notice and thereby fails to comply with the principles of natural justice and any opportunity subsequent to the making of the decision may not be relevant, for it is settled that for an unfair trial followed by a fair appeal would not cure the initial defect.

5. Further, the petitioner submits that had he been put on notice he would have put fourth his explanations as to how the delay would prove fatal to the recovery proceedings.

6. In the above circumstances, this Court is of the view that the matter may be remitted back to the appropriate authority and the petitioner is granted liberty to submit his objections within a period of three weeks from the date of receipt of a copy of this order and the appropriate authority shall dispose of the same within a period of three weeks thereafter.



With the above observations this writ petition stands disposed of.

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Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

smn

To

- 1.The Director,
Tamilnadu State Health Transport Department,
Chennai-600032.
- 2.The Workshop Superintendent,
Regional Workshop (Health),
Tamilnadu State Health Transport Department,
Coimbatore - 641 018.

+1cc to M/s.P.Rajendran, Advocate Sr.No.29480

+1cc to the Government Pleader Sr.No.30433

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JP-II(CO)
RVM(30/05/2022)